

AMENDED IN ASSEMBLY APRIL 17, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1699

Introduced by Assembly Member Torres

February 15, 2012

An act to add Chapter 3.9 (commencing with Section 50560) to Part 2 of Division 31 of, ~~and to repeal Section 50515.2 of,~~ the Health and Safety Code, relating to affordable housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1699, as amended, Torres. Affordable housing.

Existing law authorizes the Department of Housing and Community Development to provide technical assistance to groups and persons with various housing needs and to administer various housing loan programs. Existing law authorizes the department to extend the term of existing multifamily housing loans made under specified programs upon the request of any borrower, subject to certain conditions, as provided.

This bill would authorize the department to extend the term of an existing department loan, subordinate a department loan to new debt, and authorize an investment of tax credit equity under certain rental housing finance programs, subject to specified conditions. The bill would authorize the department to adopt guidelines that are not subject to the Administrative Procedures Act, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Over the past 30 years, the Legislature has authorized and
4 funded a variety of affordable rental housing development finance
5 programs administered by the Department of Housing and
6 Community Development, each with its own unique requirements
7 for ongoing operation.

8 (b) The vast majority of developments funded under these
9 programs have operated successfully, and remain an important
10 source of high-quality, highly affordable units for extremely low
11 income and very low income households. However, some
12 developments need significant renovation, beyond that which can
13 be covered by existing project reserves, or are running at a deficit
14 that is not sustainable on a long-term basis. As developments age,
15 more and more are likely to fall into this category.

16 (c) There are decreasing sources of public funding available to
17 cover needed renovations, and to eliminate operating deficits. For
18 at least the next few years, private debt and equity generated
19 through the sale of low-income housing tax credits will likely be
20 the main source of capital for this purpose.

21 (d) Accessing private debt and tax credit equity sometimes
22 requires restructuring the regulatory restrictions applicable to a
23 development, including increasing rents. Recognizing this, the
24 Legislature previously enacted legislation, Senate Bill 707 in 2007,
25 authorizing the restructuring of regulatory restrictions for some of
26 the oldest developments. This legislation applied only to selected
27 department programs that were active in the 1980s.

28 (e) Renovation needs have come to light in a number of projects
29 financed under another set of department programs, dating from
30 the early to ~~mid-1990s~~ *mid-1990s*. To address these needs, authority
31 is needed for a similar restructuring of regulatory restrictions for
32 these projects.

33 (f) It is the intent of the Legislature that the regulatory
34 restructurings needed to facilitate renovations and eliminate
35 operating deficits minimize the impact on existing tenants,
36 particularly those with the lowest incomes, and preserve as much
37 affordability as possible.

(g) Rather than have multiple different restructuring programs, it is more efficient to have one program, applicable to all of the department's older programs, with variations only where essential to address unique situations associated with the existing historical programs.

~~SEC. 2. Section 50515.2 of the Health and Safety Code is repealed.~~

~~SEC. 3.~~

SEC. 2. Chapter 3.9 (commencing with Section 50560) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

CHAPTER 3.9. PORTFOLIO RESTRUCTURING

50560. (a) The department may approve an extension of a department loan, the subordination of a department loan to new debt, or an investment of tax credit equity under one or more of the following rental housing finance programs: the original Rental Housing Construction Program established by Chapter 9 (commencing with Section 50735), the Special User Housing Rehabilitation Program established by Section 50670, the Deferred Payment Rehabilitation Loan Program established by Chapter 6.5 (commencing with Section 50660), the rental component of the California Housing Rehabilitation Program established by Section 50668.5, the component of the Rental Housing Construction Program funded with bond proceeds governed by Section 50771.1, and the Family Housing Demonstration Program established by Chapter 15 (commencing with Section 50880).

(b) Once the department has approved a loan extension, subordination, or tax credit investment pursuant to subdivision (a), the statutes enumerated in subdivision (a), and the regulations promulgated pursuant to these statutes, shall no longer apply. Developments under subdivision (a) shall instead be governed by this chapter and guidelines adopted pursuant to subdivision (c).

(c) It is the intent of the Legislature in enacting this chapter to provide to the department the flexibility necessary to maintain the quality of the affordable rental housing units for which the state has already made a significant public investment. The department may implement this chapter through guidelines that shall not be subject to Chapter 2.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code. These guidelines shall be

1 developed through a process that allows for public input prior to
2 their adoption.

3 50561. (a) The department may extend the term of an existing
4 rental housing development loan and the time for repayment for
5 additional terms as long as the rental housing development is being
6 operated in a manner consistent with the regulatory agreement and
7 the development requires an extension in order to continue to
8 operate in a manner consistent with this chapter. Each extension
9 shall be for a period of not less than 10 years and the total term of
10 the revised loan shall not exceed 55 years, or not more than 58
11 years if needed to match the term of tax credit restrictions. The
12 interest rate shall be 3 percent simple interest. The department may
13 defer payments. As necessary to generate sufficient revenue to
14 cover the cost of processing loan transactions and long-term
15 monitoring of program requirements, the department may also
16 assess loan processing and monitoring fees, require periodic or
17 capitalized loan payments, and require that cashflow be applied
18 on a priority basis toward department loan payments. In
19 determining the fees and payments to be charged, the department
20 shall seek to minimize the impact on tenants with the lowest
21 incomes and on the capacity of the developments to support private
22 debt or secure tax credit investments.

23 (b) To the minimum extent needed to support new debt or to
24 secure tax credit equity to pay for necessary rehabilitation costs,
25 as determined by the department based on third-party assessments,
26 rents for assisted units may be increased as follows:

27 (1) For developments originally financed under the bond-funded
28 component of the Rental Housing Construction Program pursuant
29 to Section 50771.1, rents may be increased up to a maximum of
30 30 percent of 60 percent of area median income, for units
31 designated in the development's original regulatory agreement as
32 lower income units, and up to a maximum of 30 percent of 35
33 percent of area median income, for units designated in the
34 development's original regulatory agreement as very low income
35 units.

36 (2) For developments originally financed under other programs,
37 and located in counties with an area median income of 110 percent
38 or less of state median income, rents for at least 35 percent of
39 assisted units shall be restricted to no more than 30 percent of 30
40 percent of state median income, expressed as a percentage of area

1 median income. For developments originally financed under other
2 programs, and located in other counties, rents for at least 35 percent
3 of assisted units shall be restricted to no more than 30 percent of
4 35 percent of state median income, expressed as a percentage of
5 area median income. Rents for the balance of the assisted units
6 may be increased up to a maximum of 30 percent of 60 percent of
7 area median income.

8 (3) For existing tenants with incomes not exceeding 35 percent
9 of area median income, increases shall be limited to 5 percent per
10 year, until the rents reach the levels specified in paragraphs (1)
11 and (2) of subdivision (b) of Section 50561. For existing tenants
12 with incomes exceeding 35 percent of area median income,
13 increases shall be limited to 10 percent per year, until they reach
14 the levels specified in paragraphs (1) and (2) of subdivision (b) of
15 Section 50561. When existing tenants move, the rent for their units
16 may be increased immediately up to the levels specified in
17 paragraphs (1) and (2) of subdivision (b) of Section 50561.

18 (4) Once rents reach their new ultimate restricted level, future
19 rent increases shall be based on increases in the area median
20 income.

21 (c) When existing tenants move, and rents are adjusted as
22 specified in subdivision (b), the income limit for new tenants shall
23 correspond with the rent limit.

24 (d) When rents are adjusted pursuant to this section, and income
25 limits reset, income levels and rent limits shall be calculated
26 consistent with the calculation methodology used under the Low
27 Income Housing Tax Credit program and the Multifamily Housing
28 Program.

29 50562. (a) When a department loan is extended or
30 subordinated, or when a new tax credit investment occurs, the
31 department shall enter into a new regulatory agreement with the
32 development's owner, or amend the existing agreement. The new
33 or amended regulatory agreement shall:

34 (1) Set standards for tenant selection to ensure occupancy by
35 the eligible households.

36 (2) Govern the terms of occupancy agreements.

37 (3) Restrict rents for assisted units, consistent with this chapter.

38 (4) Provide for periodic inspections, occupancy and financial
39 reports, and financial audits for the development.

40 (5) Govern the use of operating income for the development.

- 1 (6) Govern the use of reserves for the development.
- 2 (7) Have a term for not less than the term of the loan, including
- 3 any extension.
- 4 (8) Include other provisions necessary to carry out the purposes
- 5 of this chapter.
- 6 (b) The agreement shall be binding upon the development's
- 7 owner and successors in interest upon sale or transfer of the
- 8 development property, and regardless of any prepayment of the
- 9 loan.
- 10 (c) The agreement shall be recorded in the office of the county
- 11 recorder in the county in which the development is located.